

### **III. REMARKS**

Claims 1, 2 and 5 are amended. Applicant appreciates the indication of allowable subject in claims 2, 5 and 6 but submits that the claims are patentable as amended.

Claim 1 is amended to overcome the rejection under 35 USC 112, second paragraph.

Claims 1 and 4 are patentable under 35 U.S.C. 102(b) over Ferzli (US 5147373). Claim 1 recites that movement of the first and second lever members between the first and second positions, relative to the finger loop, causes movement of the common closable jaw for opening and closing the common closable jaw of the medical device. This feature is not disclosed or suggested by Ferzli.

In Ferzli there are two separate and distinct jaws (12, 14). Finger grip (16) of the instrument in Ferzli is stationary while finger grip (20) operates jaw (14) and finger grip (18) operates jaw (12) (Col. 2, L. 43-57). Thus, in Ferzli the finger grips (20, 18) are selectively and independently operated to independently open and close a respective one of the two alligator jaws (14, 20) (Col. 3, L. 43-46). Thus, because each finger grip (20, 18) in Ferzli independently opens and closes separate and distinct jaws (20, 14) respectively, Ferzli cannot disclose that "movement of the first and second lever members between the first and second positions, relative to the finger loop, causes "movement of the common closable jaw for opening and closing the common closable jaw of the medical device" as recited in Applicant's claim 1.

It is noted that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim," *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As described above Ferzli simply does not disclose that the finger grips (20, 18) are connected to a "common closable jaw" as each of the jaws (14, 20) are separately connected to their respect finger grip (20, 18) for independent operation. Rather, Ferzli discloses exactly the opposite (i.e. the independent operation of the separate and distinct jaws 14, 20) of what is claimed in Applicant's claim 1. Thus, claim 1 is not anticipated and is patentable over Ferzli. Claim 4 depends from claim 1 and is patentable at least by reason of its dependency.

Claims 1 and 4 are patentable under 35 USC 102(e) over Bacher (US 6299625). Again, Applicant's claim 1 recites that movement of the first and second lever members between the first and second positions, relative to the finger loop, causes movement of the common closable jaw for opening and closing the common closable jaw of the medical device. This feature is not disclosed or suggested by Bacher.

It is noted that the operation of the device in Bacher is substantially similar to the operation of the device in Ferzli. For example, Bacher discloses a first jaw part (14) and a second jaw part (16) are movable independently of one another (Col. 7, L. 54-56). The handle (10) of the device in Bacher includes a first movable handle element (30) and a second movable handle

element (32) arranged distally from thumb handle element (34) (Col. 8, L. 16-18). The first movable handle element (30) serves to actuate the opening and closing of the first jaw part (14) while the second movable handle element (32) serves to actuate the opening and closing of the second jaw part (16). The first and second handle elements (30, 32) in Bacher are mounted to the handle body (28) so as to move independently of one another. (Col. 8, L. 36-42). Thus, Bacher cannot disclose or suggest what is claimed in Applicant's claim 1 because each of the handle elements (30, 32) in Bacher are independently movable such that each of the jaw parts (14, 16) are independently operable.

Again, it is noted that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim," *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As described above the independent operation of the first and second jaw parts (14, 16) in Bacher is exactly the opposite of what is claimed in Applicant's claim 1. Bacher simply does not disclose or suggest that movement of the first and second lever members between the first and second positions, relative to the finger loop, causes movement of the common closable jaw for opening and closing the common closable jaw of the medical device. Bacher expressly discloses independent operation of separate and distinct first and second jaw parts (14, 16) and nothing more. Therefore, claim 1 is patentable over Bacher. Claim 4 is patentable at least by reason of its dependency.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

If the Examiner plans to issue another office action after considering the above amendments and remarks, Applicant respectfully requests a telephone interview with the Examiner.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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